

Entered on Docket

April 02, 2010

GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



Signed: April 02, 2010

EDWARD D. JELLEN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Case No. 05-40908 EDJ
GORDON CHARLES MOORE and Adv. No. 05-04255 AJ
BETTY ANN MOORE,

Debtors. /

DICK PAUL,

Plaintiff,

vs.

GORDON CHARLES MOORE and
BETTY ANN MOORE,

Defendants. /

MEMORANDUM

Plaintiff Dick Paul ("Paul") has moved for reconsideration of this court's order filed February 25, 2010 denying Paul's motion to reopen this adversary proceeding and to set aside a settlement agreement between Paul and debtors Gordon and Betty Moore (the "debtors"). The court will deny the motion.

A. Background

On May 13, 2005, Paul filed an adversary complaint herein

Memorandum

1 seeking a nondischargeable judgment against the above debtors
2 grounded on fraud. Bankruptcy Code § 523(a)(2). Thereafter, the
3 parties advised the court that they had settled the matter.
4 However, the parties did not file any formal documents to conclude
5 the adversary proceeding, such as a dismissal or a request for entry
6 of a stipulated judgment. Accordingly, on August 29, 2006, this
7 court entered its Dismissal With Stay (the "Dismissal Order")
8 dismissing the adversary proceeding. The Dismissal Order provided
9 that it was stayed for 10 days to allow either party to seek relief
10 from the dismissal.

11 On September 8, 2006, Paul filed a timely motion seeking relief
12 from the dismissal. The motion alleged that, although the parties
13 had settled the matter, Paul's counsel was of the view that the
14 debtors had fraudulently induced Paul to enter into the settlement
15 because they had failed to make the payments required thereunder.
16 Paul set the motion for hearing, but then removed the matter from
17 calendar. Thus, the Dismissal Order became final.

18 Over three years passed. Then, on November 10, 2009, Paul
19 filed a motion to reopen this adversary proceeding and to set aside
20 the Dismissal Order (hereafter, the "2009 Motion"). Unlike the
21 motion for relief from the settlement agreement that Paul filed in
22 2006, the 2009 Motion did not allege the debtor's fraud in the
23 inducement of the settlement agreement. (Indeed, neither the word
24 "fraud" nor the word "misrepresentation" appeared in any of Paul's
25 moving papers for the 2009 Motion.) Rather, the 2009 Motion alleged
26 that Paul's obligation to dismiss the complaint was conditioned on

1 the debtors' performance under the settlement, that the debtors did
2 not perform, and therefore, that the court should set aside the
3 Dismissal Order.

4 Following oral argument, the court advised the parties that it
5 would deny the 2009 Motion, citing case law to the effect that the
6 court lacked jurisdiction over actions to enforce or set aside the
7 settlement agreement because the court had not reserved any
8 jurisdiction, and because both the adversary proceeding and the main
9 bankruptcy case had been closed. The cases cited by the court were
10 Kokkonen v. Guardian Life Insurance Co., 511 U.S. 375 (1994), In re
11 Hunter, 66 F.3d 1002 (9th Cir. 1995), and Valdez Fisheries Devel.
12 Assoc. v. Seahawk Seafoods, Inc., 439 F.3d 545 (9th Cir. 2006). On
13 February 25, 2010, the court entered its order denying the 2009
14 Motion. Paul's present motion for reconsideration followed.

15 Paul's motion for reconsideration, unlike the 2009 Motion,
16 alleges that the debtors induced Paul to enter into the settlement
17 agreement by fraud, and that the court should set aside the
18 Dismissal Order and settlement agreement on that ground. Paul
19 apparently concedes that any request for relief grounded on the
20 debtors' fraud and Fed. R. Civ. P. 60(b)(3)¹ (relief from a final
21 judgment based on "fraud, misrepresentation, or misconduct by an
22 opposing party") would not be timely. This is so because motions
23

24 ¹Subject to several exceptions not applicable here, Fed. R.
25 Civ. P. 60 applies in adversary proceedings via Fed. R. Bankr. P.
26 9024. All further references herein to Fed. R. Civ. P. 60 are to
Fed. R. Civ. P. 60 via Fed. R. Bankr. P. 9024.

1 under Fed. R. Civ. P. 60(b)(3) must be filed within one year of
2 entry of the final judgment at issue. Fed. R. Civ. P. 60(c)(1). In
3 support of the motion for reconsideration, then, Paul cites Fed. R.
4 Civ. P. 60(b)(6), which authorizes a court to relieve a party from a
5 final judgement "for any reason justifying relief from the operation
6 of the judgment."

7 **B. Discussion**

8 The court will deny Paul's motion for reconsideration for two
9 basic reasons. First, Paul's request from relief from the Dismissal
10 Order was not timely. Fed. R. Civ. P. 60(c)(1) provides that
11 motions for relief grounded on Fed. R. Civ. P. 60(b)(6) "must be
12 made within a reasonable time."

13 Here, Paul did not act within a reasonable time. Over three
14 years have passed since the Dismissal Order became final. As early
15 as September 8, 2006, Paul alleged in this court that debtors
16 fraudulently induced him to enter into the settlement agreement, and
17 Paul elected at that time not to pursue the matter. Thus, Paul has
18 been on notice of any fraud in the inducement for over three years
19 before he filed the current motion seeking relief from the Dismissal
20 Order.² Moreover, counsel for the debtors states that he is unable

22 ²The court also notes that under California law, actions
23 grounded on fraud must be commenced within three years of
24 discovery of facts constituting the fraud. Cal. Civ. Proc. Code
25 § 338(d). Here, Paul claims in his motion for reconsideration
26 that, at some unstated point during the three years following
execution of the settlement agreement, he discovered some
evidence to corroborate his contention that debtors fraudulently
(continued...)

1 to locate debtor Charles Moore, and that unfair prejudice would
2 therefore result if the court were to grant Paul relief from the
3 settlement agreement or Dismissal Order.

4 The court holds that Paul's motion grounded on Fed. R. Civ. P.
5 60(b)(6) seeking relief from the Dismissal Order was not timely,
6 Fed. R. Civ. P. 60(c)(1), and must therefore be denied.

7 Secondly, to the extent that Paul seeks to set aside the
8 settlement agreement, in this court, on the grounds of the debtor's
9 fraud in the inducement, this court lacks subject matter
10 jurisdiction under the rationale of Kokkonen, Hunter, and Valdez
11 Fisheries. The court did not reserve jurisdiction, and no other
12 basis for bankruptcy court jurisdiction exists under 28 U.S.C.
13 § 1334(a) and (b).

14 In so holding, the court notes, in conformity with the Ninth
15 Circuit's ruling in Hunter, 66 F.3d at 1006, that its decision is
16 not intended as a ruling on the merits of Paul's contention that the
17 settlement agreement may be set aside on the grounds of the debtors'
18 fraud. In Hunter, the Ninth Circuit held that the Bankruptcy
19 Appellate Panel erred in affirming the bankruptcy court's decision
20 to dismiss, on the merits, a creditor's independent action to set
21 aside a satisfaction of judgment on the grounds of the debtor's
22 alleged fraud. The error arose, opined the Hunter court, because

²(. . . continued)

1 Fed. R. Civ. P. 60 does not bar a party from obtaining relief from
2 the effect of a final judgment by independent action, Fed. R. Civ.
3 P. 60(d)(1), and because the bankruptcy court lacked subject matter
4 jurisdiction over any such independent action.

5 Citing the Hunter case, Paul argues that this court may have
6 subject matter jurisdiction if the debtors' conduct in connection
7 with the Dismissal Order could be considered a "fraud on the court."
8 See also Fed. R. Civ. P. 60(d)(3). This argument fails, however,
9 because there was no fraud on the court here.³ No fraud aimed at
10 the court is alleged. Moreover, the only representation made to the
11 court in connection with the Dismissal Order was that the parties
12 had settled the matter. This representation was made by both
13 parties, and was, in fact, true.

14 /////

15 /////

16

17 ³The Ninth Circuit has adopted the following definition of
18 "fraud on the court:"

19 "Fraud upon the court" ... embrace[s] only that species
20 of fraud which does or attempts to, defile the court
21 itself, or is a fraud perpetrated by officers of the
court so that the judicial machinery can not perform in
the usual manner its impartial task of adjudging cases
22 that are presented for
adjudication.

23 Appling v. State Farm Mut. Auto. Ins. Co., 340 F.3d 769, 780
(9th Cir. 2003) (internal citations omitted). In Appling, the
24 Ninth Circuit stated in this regard that a fraud on the court
25 requires a 'grave miscarriage of justice' . . . and a fraud that
26 is aimed at the court. Id. (Internal citation omitted.)

1 || C. Conclusion

2 Paul is not entitled to relief from the Dismissal Order
3 grounded on Fed. R. Civ. P. 60, and the court lacks subject matter
4 jurisdiction to hear any suit to set aside or enforce the settlement
5 agreement at issue. The court will issue its order so providing.

** END OF MEMORANDUM **

Memorandum

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